

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
CASE NUMBER _____

GD DEAL HOLDINGS, LLC

PLAINTIFF

v.

SURINDER MULTANI;
ABBE PROPERTIES, LLC;
SAPPHIRE SUPPLY, LLC;
JGG INVESTMENTS, LLC;
ABBE CAPITAL AND LEASING, LLC;
ABBE MANAGEMENT GROUP, LLC;
FIFTH THIRD BANK;
CITIBANK;
VENDOR CAPITAL GROUP;
BABAJI PS, LLC;
CAPITAL ACCESS & INVESTMENTS, LLC;
PETROZONE PETROLEUM II, INC.;
G & S PORTAGE, INC.;
SAFANPREET MULTANI; AND
SURINDER MULTANI, IN HIS CAPACITY AS TRUSTEE
FOR GURPRIYA KAUR MULTANI IRREVOCABLE TRUST,
GURPAP SINGH MULTANI IRREVOCABLE TRUST, AND
JAPVI SINGH MULTANI IRREVOCABLE TRUST

FILED: MARCH 25, 2008
08CV1722 RCC
JUDGE GRADY
MAGISTRATE JUDGE BROWN

DEFENDANTS

COMPLAINT

The Plaintiff, GD Deal Holdings, LLC, by and through counsel, and for its cause of action herein, states as follows:

PARTIES

1. The Plaintiff GD Deal Holdings, LLC (“GD Deal”) is a Delaware limited liability company with its principal place of business in Bowling Green, Kentucky.
2. The Defendant, Surinder Multani, is a citizen and resident of the State of Illinois. Surinder Multani (“Multani”) is also known as Sam Multani. Surinder Multani currently resides at 302 Midwest Club, Oak Brook, Illinois 60523.

3. Safanpreet Multani is a citizen and resident of the State of Illinois. Safanpreet Multani currently resides at 302 Midwest Club, Oak Brook, Illinois 60523.

4. Upon information and belief, Surinder Multani and Safanpreet Multani are spouses that maintain 302 Midwest Club, Oak Brook, Illinois as a homestead.

5. Abbe Properties, LLC, is an Illinois limited liability company with its principal office at 2015 South Arlington Heights Road, Suite 120, Arlington Heights, Illinois 60005.

6. Sapphire Supply, LLC is an Illinois limited liability company with its principal office located at 2015 South Arlington Heights Road, Suite 120, Arlington Heights 60005. Defendant Multani is the registered agent for Sapphire Supply, LLC.

7. JGG Investments, LLC is an Illinois limited liability company with its principal office at 2015 South Arlington Heights Road, Suite 120, Arlington Heights 60005.

8. Abbe Capital and Leasing, LLC is an Illinois limited liability company with its principal office at 2015 South Arlington Heights Road, Suite 120, Arlington Heights, Illinois 60005.

9. Abbe Management Group, LLC, is an Illinois limited liability company with its principal office at 2015 South Arlington Heights Road, Suite 120, Arlington Heights, Illinois, 60005.

10. The Defendants, Fifth Third Bank and Citibank, are natural banking associations doing business in the State of Illinois.

11. The Defendant Vendor Capital Group is a division of Telerent Leasing Corp, a Delaware Corp., with its principal office at 4191 Fayetteville Rd., Raleigh, North Carolina 27603.

12. Babaji PS, LLC is a Texas limited liability company with its principal office at 1718 Fry Road, Suite 415, Houston, Texas 77084. The registered agent at that address is Narendra Bhalla.

13. Capital Access & Investments, LLC is a Texas limited liability company with its principal office at 1718 Fry Road, Suite 415, Houston, Texas 77084. The registered agent at that address is Narendra Bhalla.

14. Petrozone Petroleum, II, Inc. is a Texas corporation with its principal office at 1612 South Day Street, Brenham, Texas 77833. The registered agent at that address is Sandeeppreet Singh.

15. G & S Portage, Inc. is an Indiana corporation with its principal office at 1856 Samuelson Road, Portage, Indiana 46368. The registered agent at that address is Ajai Agnihotri.

16. The Defendant, Surinder Multani, is the Trustee of the Gurpriya Kaur Multani Irrevocable Trust, Gurpap Singh Multani Irrevocable Trust and Japvi Singh Multani Irrevocable Trust (“Trusts”), which were created by Safanpreet Multani as Settlor.

17. Jurisdiction is proper under 28 USC § 1332 in that the amount in controversy, exclusive of interest and cost, exceeds \$75,000.00 and that this matter is between citizens of different states.

18. Venue for this action is proper under 28 USC § 1391 in that it involves real estate located in this district and the defendants located in this district.

GENERAL ALLEGATIONS

19. The Defendant, Surinder Multani, is indebted to the Plaintiff, GD Deal Holdings, for the sum of \$10,048,295.12 as of May 11, 2007, with post-judgment interest accruing thereon at the rate of 4.9% until paid in full, pursuant to an Order and Judgment (“Judgment”) entered by the United States District Court, Western District of Kentucky, Bowling Green Division in Case Number 1:05-CV-3R, on May 11, 2007, a copy which is attached to hereto as Exhibit A.

20. The Judgment has been registered in this Court by filing on September 4, 2007 in Case Number 07-CV-04965 pursuant to 28 U.S.C. § 1963.

21. Pursuant to the registration, GD Deal has filed a Memorandum of Judgment in the Cook County real property records, a copy of which is attached as Exhibit B, on October 9, 2007.

22. The Defendant, Surinder Multani, owns real estate located in Cook County, Illinois located at 124 Bright Ridge Drive, Schaumburg, IL, 60194-3696, Parcel No. 07 23 102 021 0000 (the "Cook County Real Estate").

23. The Defendant, Surinder Multani, owns personal property situated in both Cook County, Illinois and DuPage County, Illinois, as indicated by the financial statements prepared by Multani, copies of which are attached as Exhibit C. The value of the personal property exceeds the allowed exemptions under Illinois State Law.

24. The Defendant, Surinder Multani, is a member, shareholder, sole member, or sole shareholder of Abbe Properties, LLC; Sapphire Supply, LLC; JGG Investments, LLC; Abbe Capital and Leasing, LLC; Abbe Management Group, LLC; Babaji PS, LLC; Capital Access & Investments, LLC; Petrozone Petroleum II, Inc.; and G & S Portage, Inc.

COUNT I: ORDER OF SALE OF REAL AND PERSONAL PROPERTY

25. The Plaintiff adopts and incorporates by reference the allegations set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. The Judgment against Surinder Multani constitutes a lien on the property of Multani pursuant to 28 U.S.C. §1962.

27. The Plaintiff, GD Deal, is entitled to an Order directing the United States Marshall to take control and possession of the Cook County Real Estate of Defendant Surinder Multani, and to subject such real estate to public auction and sale upon such terms and conditions as may be set by,

this Court, or required by statute including 28 U.S.C. § 2001, 735 ILL. COMP. STAT. 5/12-112, 735 ILL. COMP. STAT. 5/12-115, 735 ILL. COMP. STAT. 5/12-152, and FED. R. CIV. P. 69.

28. The Plaintiff, GD Deal, is entitled to an Order directing the United States Marshall to take control and possession of the non-exempt personal property of Defendant Surinder Multani, and to subject such personal property to public auction and sale upon such terms and conditions as may be set by this Court, or required by statute including 28 U.S.C. § 2004, 735 ILL. COMP. STAT. 5/12-111, 735 ILL. COMP. STAT. 5/12-112, 735 ILL. COMP. STAT. 5/12-158, and FED. R. CIV. P. 69.

WHEREFORE, the Plaintiff, GD Deal Holdings, LLC, respectfully requests: 1) that the Court enter an Order directing the United States Marshall to take possession and control of the Defendant Surinder Multani's real estate and subject it to public auction; and 2) that the Court enter an Order directing the United States Marshall to take possession and control of the Defendant Surinder Multani's non-exempt personal property and subject it to public auction.

COUNT II: REQUEST FOR CHARGING ORDER

29. The Plaintiff adopts and incorporates by reference the allegations set forth in Paragraphs 1 through 28 inclusive as if fully set forth herein.

30. Pursuant to 805 ILCS 180/30-20, the Plaintiff is entitled to a charging order as against Surinder Multani's interest in Abbe Properties, LLC; Sapphire Supply, LLC; JGG Investments, LLC; Abbe Capital and Leasing, LLC; Abbe Management Group, LLC; Babaji PS, LLC; Capital Access & Investments, LLC; Petrozone Petroleum II, Inc.; and G & S Portage, Inc. (collectively the "Multani Companies"), so that all distributable interests apply to satisfy the Judgment.

31. The Plaintiff requests that a Receiver be appointed for the distributional interests due or to become due to Surinder Multani.

32. The Plaintiff is further entitled to an order of foreclosure of its lien, directing that the interests of Surinder Multani in the Multani Companies be sold to satisfy the lien of GD Deal.

WHEREFORE, the Plaintiff, GD Deal Holdings, LLC, respectfully requests: 1) that the Court enter a charging Order as against the Defendant Surinder Multani's interests in the Multani Companies; 2) that the Court enter an Order appointing a Receiver for the distributable interests in the Multani Companies due or to become due to Surinder Multani; and 3) that the Court enter an Order of foreclosure directing the sale of the Defendant Surinder Multani's interests in the Multani Companies.

COUNT III: ADVERSE CLAIMS

33. The Plaintiff adopts and incorporates by reference the allegations set forth in Paragraphs 1 through 32, inclusive, as if fully set forth herein.

34. The Defendant Fifth Third Bank is made a party hereto by reason of its open-end Mortgage dated June 24, 2004, recorded July 26, 2004, as against the real estate located at 24 Bright Ridge Road, Schaumburg, IL. The Defendant Fifth Third Bank should be required to enter its appearance herein and assert its interest in the real estate, if any.

35. The Defendant Citibank is made a party hereto by reason of its Equity Source Account Mortgage dated July 22, 2004, and recorded August 9, 2004 as against the real estate located at 24 Bright Ridge Road, Schaumburg, IL. The Defendant Citibank should be required to enter its appearance herein and assert its interest in the real estate, if any.

36. The Defendant Vendor Capital Group is made a party hereto by reason of its Memorandum of Judgment, recorded August 7, 2007, as against the real estate located at 24 Bright Ridge Road, Schaumburg, IL. The Defendant Vendor Capital Group should be required to enter its appearance herein and assert its interest in the real estate, if any.

37. The Defendant Safanpreet Multani should be required to enter her appearance herein and to assert her interest in the real estate, if any.

WHEREFORE, the Plaintiff, GD Deal Holdings, LLC, respectfully requests that the Defendants referenced within Count III herein be required to come forth and assert whatever right, title and interest in and to the property described in this Complaint they have or may have or be forever barred.

COUNT IV: FRAUDULENT CONVEYANCES

38. The Plaintiff adopts and incorporates by reference the allegations set forth in Paragraphs 1 through 37, inclusive, as if fully set forth herein.

39. On information and belief, the Plaintiff, GD Deal, alleges that the Defendant, Surinder Multani, has transferred to the Trusts assets for the purpose of shielding them from the claims of his creditors, including, but not limited to, his interest in ABBE Properties, LLC.

40. On information and belief, the Plaintiff, GD Deal, alleges that the transfers from Surinder Multani to the Trusts were without consideration, and made with the intent to hinder, delay or defraud creditors, all in violation of Illinois law.

41. The transfer should be set aside and held invalid, and the property and interest held subject to the claims of creditors, including the Plaintiff herein.

WHEREFORE, the Plaintiff, GD Deal Holdings, LLC, requests that the transfer described within this Count IV be set aside and held invalid, that GD Deal's judgment against Surinder Multani be declared a lien on the subject property prior to transfer, and that a Receiver be appointed for the purpose of applying such property to GD Deal's judgment.

WHEREFORE, The Plaintiff, GD Deal Holdings, LLC, request such orders of appropriate relief as requested herein, along with an award of attorney's fees, court costs and any and all other appropriate relief.

This _____ day of March, 2008.

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THOMAS F. FALKENBERG

08CV1722

JUDGE GRADY

MAGISTRATE JUDGE BROWN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CASE NO.: 1:05-CV-3-R

G.D. DEAL HOLDINGS, INC., et. al.,

PLAINTIFFS

v.

BAKER ENERGY, INC, et. al.,

DEFENDANTS

ORDER

IT IS SO ORDERED:

The Plaintiff's Motion for Summary Judgment (Docket #77) is **GRANTED**. The Court finds that the Defendants owe the Plaintiff \$660,433.96 for failure to pay the Plaintiff rent on the real property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff \$7,766,428.97 in damages for an accelerated amount of rent due after the rejection of the real property lease agreement by the Defendants in August 2005. The Court finds that the Defendants owe the Plaintiff \$451,223.70 for failure to pay the Plaintiff rent on the personal property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff \$945,098.98 in damages for an accelerated amount of rent due after the rejection of the personal property lease agreement by the Defendants in August 2005. The Court finds that the Plaintiff is entitled to \$140,296.04 in attorney fees and costs. The Court finds that the Plaintiff is entitled to \$84,813.47 in miscellaneous costs associated with the Defendants' breach of the real property lease. Lastly, the Defendants' counterclaim against the Plaintiff for breach of the lease agreement fails as a matter of law.

Accordingly, the Plaintiff shall recover \$10,048,295.12 in damages from the Defendants for their breach and default of the real property and personal property leases.

Exhibit A

May 11, 2007

Thomas B. Russell
Thomas B. Russell, Judge
United States District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CASE NO.: 1:05-CV-3-R

G.D. DEAL HOLDINGS, INC., et. al.,

PLAINTIFFS

v.

BAKER ENERGY, INC, et. al.,

DEFENDANTS

MEMORANDUM OPINION

This matter comes before the Court on the Plaintiff G.D. Deal Holdings, LLC's ("GD Deal") Motion for Summary Judgment (Docket #77). Defendants Rohit Sharma ("Sharma") and Surinder Multani ("Multani") have responded (Docket #83)¹, and the Plaintiff has replied to their response (Docket #85). This matter is now ripe for adjudication. For the following reasons, the Plaintiff's Motion for Summary Judgment is **GRANTED**.

PROCEDURAL HISTORY

The Plaintiff initially filed this action against the Defendants in Warren County Circuit Court. It was removed to this Court on January 10, 2005. On March 11, 2005, the Court ordered that this matter be stayed through the duration of the bankruptcy concerning the Defendants, though the Court retained jurisdiction. On March 6, 2006, the bankruptcy petition of Defendant Baker Energy, Inc. was dismissed. On September 28, 2006, the Court removed the stay and restored this matter to the active docket. The Plaintiff filed the instant motion in January 2007.

FACTUAL BACKGROUND

This case arises from a dispute concerning real property and personal property leases connected to thirty-eight (38) gasoline stations and convenience stores located throughout

¹Defendant Baker Energy, Inc. has not responded to this motion.

western Kentucky and north-central Tennessee. In April 2001, the Plaintiff leased thirty-eight (38) gasoline stations and convenience stores ("properties") to Clark Retail Enterprises, Inc. ("CRE"). There were two (2) leases between GD Deal and CRE that dealt with real property, personal property and equipment at the thirty-eight (38) locations ("real property lease" and "personal property lease"). GD Deal was the owner of the real property on which the gasoline stations and convenience stores were located. GE Capital Franchise Finance Corporation ("GE Capital") was the mortgage lender of the properties. FFCA Acquisition Corporation ("FFCA") had a security interest on all of the equipment located at the properties. However, following a merger between GE Capital and FFCA, GE Capital held both the mortgage and security interests.

On October 15, 2002, CRE filed a voluntary petition in the United States Bankruptcy Court for the Northern District of Illinois requesting reorganization under Chapter 11. The Court in that matter granted CRE the authority to assign its leases on the properties to Baker Energy, Inc. ("Baker"), which was run by Sharma and Multani. Both Sharma, the President and an equity owner of Baker, and Multani, a director and shareholder of Baker, personally guaranteed payment of all liabilities under the leases on behalf of Baker to GD Deal. Pursuant to the Assumption Order and Assumption Agreement by the Bankruptcy Court on August 26, 2003, Baker became the holder of CRE's leasehold interests in the properties. This included the payment of rent to GD Deal under the terms of the leases.

After assuming the liabilities under the leases, the Plaintiff contends that Baker defaulted on several of its obligations. On January 5, 2005, GD Deal sent Baker a "notice of default and notice of termination upon failure to cure default" letter. On January 20, 2005, GD Deal sent

Baker another letter, this time informing Baker that it was terminating its lease with Baker regarding the properties. Four (4) days later on January 24, 2005, this Court issued an agreed preliminary injunction so that Crown Oil and Petroleum Supplies, Inc. ("Crown Oil"), who had been assigned some of Baker's interests as a tenant under the leases, could collect rent from the subtenants of the properties. However, on February 4, 2005, Crown Oil filed a voluntary petition of bankruptcy with the United States Bankruptcy Court for the Eastern District of Wisconsin seeking relief under Chapter 11. Eleven (11) days later, on February 15, 2005, Baker followed suit, filing a voluntary petition of bankruptcy with the United States Bankruptcy Court for the Western District of Tennessee seeking relief under Chapter 11. Both petitions were eventually dismissed. From February 2005 through August 2005, GD Deal was not able to act on and/or collect rent from the properties due to the bankruptcy proceedings.

In April 2005, GE Capital, as the holder of the mortgage and security interests, accelerated the amount of debt due and began the process of foreclosure of the properties. In August 2005, the Bankruptcy Court for the Western District of Tennessee held that Baker had rejected the leases between it and GD Deal. At that point, the Plaintiff attempted to collect rent from the subtenants of Baker who were operating the properties. However, in September 2005, GE Capital sent a stay collection letter to GD Deal, demanding that GD Deal cease its collection efforts from the properties. GE Capital then filed a claim in this Court, requesting foreclosure on the Kentucky properties. The Court held that the foreclosure actions asserted by GE Capital were not related to Baker's bankruptcy case to confer jurisdiction, and therefore, dismissed GE Capital's claim.

As a result, GE Capital pursued its foreclosure claims by filing actions in more than

twenty (20) separate circuit courts throughout the Commonwealth. The Kentucky courts appointed NRC Realty Advisors, LLC (“NRC Realty”) to possess the property pending sale and act as the receiver over the properties. This precluded GD Deal from exercising any ownership over the properties. The majority of the properties have been foreclosed upon and sold. In this case, GD Deal seeks to recover all available remedies against Baker, Sharma and Multani, arguing that the Defendants breached the terms of the leases that covered the properties.

STANDARD

Summary judgment is available under Fed. R. Civ. P. 56(c) if the moving party can establish that the “pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” In determining whether summary judgment is appropriate, a court must resolve all ambiguities and draw all reasonable inferences against the moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

“[N]ot every issue of fact or conflicting inference presents a genuine issue of material fact.” *Street v. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989). The test is “whether the party bearing the burden of proof has presented a jury question as to each element in the case.” *Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir. 1996). The plaintiff must present more than a mere scintilla of evidence. To support this position, he must present evidence on which the trier of fact could find for the plaintiff. *See id.* (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 251-52 (1986)). Mere speculation will not suffice to defeat a motion for summary judgment: “[t]he mere existence of a colorable factual dispute will not defeat a properly supported motion for summary

judgment. A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate." *Monette v. Electronic Data Systems Corp.*, 90 F.3d 1173, 1177 (6th Cir. 1996).

Finally, while Kentucky state law is applicable to this case pursuant to *Erie Railroad v. Tomkins*, 304 U.S. 64 (1938), a federal court in a diversity action applies the standards of Fed. R. Civ. P. 56, not "Kentucky's summary judgment standard as expressed in *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (1991)." *Gafford v. General Electric Co.*, 997 F.2d 150, 165 (6th Cir. 1993).

DISCUSSION

GD Deal claims damages against the Defendants for breaching both leases. Under the real property lease, GD Deal claims that it is owed damages for the Defendants' failure to pay rent for the time period prior to the date Baker rejected the lease and that GD Deal is owed damages connected to the sums that were to become due after Baker rejected the lease agreement, as stipulated by the lease.

Under the personal property lease, GD Deal claims that it is owed damages for the Defendants' failure to pay rent for the time period prior to the date Baker rejected the lease and that GD Deal is owed damages connected to the sums that were to become due after Baker rejected the lease agreement, as stipulated by the lease.

In addition, GD Deal contends that under the terms of the leases it is entitled to recover all court costs, attorney fees, associated legal expenses and miscellaneous costs under the terms of the real property lease. In total, GD Deal claims \$10,048,295.12 in damages for Baker's alleged breach of the leases.

In their response, the Defendants argue GD Deal overcharged Baker in excess of \$752,253.82. In addition, the Defendants assert that the January 24, 2005 agreed preliminary injunction is a novation, which discharges any obligations the Defendants may have had to the Plaintiff in relation to the leases. In its reply, the Plaintiff contends that Baker did not overpay its rent and that the agreed preliminary injunction did not constitute a novation.

The Court shall first address the defense raised by the Defendants in their response in determining whether the agreed preliminary injunction was a novation that discharged the Defendants from any liability to the Plaintiff. The Court shall then examine the arguments asserted by the Plaintiff in its motion to determine if GD Deal is entitled to damages due to the Defendants' alleged breach of the real property and personal property leases. In addition, the Court shall also address the claims by the Plaintiff for court costs, attorney fees and associated legal expenses incurred by GD Deal in connection with the alleged breach by Baker. Lastly, the Court shall address the cross claim filed against GD Deal by Baker contending that GD Deal overcharged the Defendants \$752,253.82 in rent.

1. Agreed Preliminary Injunction as a Novation

In their response to the Plaintiff's motion for summary judgment, the Defendants contend that the January 24, 2005 agreed preliminary injunction ("injunction") between the parties and Crown Oil constituted a novation that discharged the Defendants from any debt owed to the Plaintiff. As noted *supra*, when the Bankruptcy Court permitted CRE to assign its interest and liabilities in the properties to Baker, Sharma and Multani personally guaranteed Baker's debt. However, the Defendants argue that because the injunction is a novation it supercedes any previous agreements reached by the parties concerning debt under the leases. In addition,

Defendants Sharma and Multani contend that because they did not sign the January 24, 2005 injunction they have no continuing obligation under the leases. In its reply, the Plaintiff contends that: 1) the agreed preliminary injunction entered by the Court was not a novation; 2) the Defendants are judicially estopped from claiming the lease agreements were extinguished by an alleged novation; and 3) the Defendants waived the defense of discharge by novation in the personal guaranty agreement.

Kentucky courts define a novation as “the substitution of a new obligation for an old one, with intent to extinguish the old one, or the substitution of a new debtor for an old one, with the intent to release the latter, or the substitution of a new creditor, with the intent to transfer the rights of the old one to him.” *Truscon Steel Co. v. Thirlwell Elec. Co.*, 265 Ky. 414, 416-17 (1936); *see also In re Cantrill Const. Co.*, 418 F.2d 705, 707 (6th Cir. 1989); *M.A. Walker Co., Inc. v. PBK Bank, Inc.*, 95 S.W.3d 70, 75 (Ky. Ct. App. 2002). “Intent is the essential element” in proving the existence of a novation, and “[t]he burden of proving a novation [is] on the [party seeking to enforce it].” *In re Cantrill Const. Co.* at 707; *see also Clark v. Thompson*, 219 S.W.2d 22, 29 (Ky. 1949)(quoting *North Western Mut. Life Ins. Co. v. Eddleman*, 247 Ky. 116, 56 S.W.2d 561 (Ky. Ct. App. 1932) (“[w]hether a novation has been accomplished or not depends upon the intention of the parties. This intent is the controlling element in determining the question, and unless the transaction was intended to extinguish the old obligation by substituting the new one therefor, a novation is not effected.”)).

In the instant matter, there was no intent by the Plaintiff in the injunction to extinguish the obligations of the Defendants under the leases. The Defendants have not pointed to any specific language from the injunction that demonstrates that GD Deal sought to release the

Defendants from their obligations. On the contrary, the injunction states, in pertinent part:

IT IS FURTHER ORDERED as agreed that nothing herein shall be construed or interpreted as a release of any claims defenses by any party, *or as a release of the obligations of any guarantor*. Further, nothing herein shall be construed or interpreted as a consent or acceptance by GD Deal or Girkin Development to the assignment by Baker Energy to Crown, or a waiver of any defaults under the lease agreements, or a release of Baker Energy's liability under the lease agreements except for subsequent lease payments, which come due while this Order is in place. (emphasis added).

This section of the injunction leaves no doubt that GD Deal did not intend to release the Defendants from their obligations. The Defendants have not met their burden in proving that the Plaintiff intended to release them from their obligations. Accordingly, the January 24, 2005 Agreed Preliminary Injunction did not serve as a novation of the leases, and therefore, the Defendants obligations to the Plaintiff continued after the injunction was issued.

Further, the Court also concurs with the argument asserted by the Plaintiff that the Defendants are judicially estopped from claiming that their obligations under the leases were extinguished by a novation. The doctrine of judicial estoppel is “an equitable doctrine invoked by the court at its discretion.’ *See New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001).” *Lewis v. Weyerhaeuser Co.*, 141 Fed. Appx. 420, 423 (6th Cir. 2005). The doctrine “generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.’ *New Hampshire*, 532 U.S. at 749, 121 S.Ct. 1808.” *Id.* at 424. “Judicial estoppel ‘preserve[s] the integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship.’ *Browning v. Levy*, 283 F.3d 761, 776 (6th Cir.2002) (quotation omitted). This court has previously described judicial estoppel as a rule against ‘playing fast and loose with the courts,’ ‘blowing hot and cold as the occasion demands,’ or ‘hav[ing] [one’s] cake and eat[ing] it too.’

Reynolds v. Comm'r, 861 F.2d 469, 472 (6th Cir.1988) (citations omitted) (alteration in original)." *Id.*

Essentially, judicial estoppel bars a party from ““(1) asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding, where (2) the prior court adopted the contrary position either as a preliminary matter or as part of a final disposition.” *Browning*, 283 F.3d at 775 (internal quotation omitted)." *Id.*

During Baker’s bankruptcy proceeding, which was after the injunction was signed by the parties, the Defendants acknowledged through their Motion to Extend Time Period to Assume of Reject Unexpired Leases of Non-Residential Real Property that the leases were not extinguished. In that motion, which was filed after January 24, 2005, Baker stated that it is “the lessee under certain leases of non-residential real which consist primarily of service stations/convenience stores located in Kentucky.” To now argue that the injunction served as a novation after acknowledging that it was a lessee under the agreement is an example of what the doctrine of judicial estoppel seeks to preclude; “preventing a party from abusing the judicial process through cynical gamesmanship.” *Browning* at 776. Accordingly, the Defendants are judicially estopped from arguing that the January 24, 2005 injunction was a novation.²

2. Damages under the Real Property Lease

The Plaintiff claims two (2) sets of damages against the Defendants under the real property lease: 1) failure to pay rent for the time period prior to the date Baker rejected the lease

²The Plaintiff also asserts that the Defendants waived the defense of discharge by novation because they signed personal guarantee statements. The Plaintiff acknowledges that Kentucky has not addressed this specific issue, and has instead cited cases from Georgia and Pennsylvania. This Court has not found any Kentucky or Sixth Circuit case law on point. Nonetheless, as the Court has determined that the January 24, 2005 Agreed Preliminary Injunction was not a novation and that the Defendants are judicially estopped from arguing that the injunction was a novation, the Court does not need to address this argument of first impression at this juncture.

agreement and 2) sums that would become due after Baker rejected the lease agreement. In their response, the Defendants did not address these arguments nor the figures submitted by the Plaintiff. The Court shall address each claim under the real property lease separately.

i) Failure to Pay Rent

The Plaintiff contends that from February 2005 through August 2005, the Defendants owe the Plaintiff rent on the real property. While the Plaintiff does acknowledge that it did receive some rent during that time (\$521,929.56) from Crown Oil on behalf of the Defendants, it claims that the Defendants fell short by a total of \$660,433.96.

The rent per month for the real property was \$153,887.00. There was a seven (7) month period where the Plaintiff claims it was not paid, for a total of \$1,077,209.00 (\$153,887.00 x 7). Subtracting the amount paid by the Defendants from the seven (7) month figure and the remaining amount becomes \$555,279.44. The Plaintiff reaches the figure of \$660,433.96 by contending that the Defendants owed interest on the rent for late payment, as stated in Section 6.5 of the lease. The lease states that “[a]ny delinquent payment by Tenant (that is, any payment not made by the date when and after all applicable notice and cure periods provided in this Lease) shall, in addition to any other remedy of Landlord, bear interest at the Default Rate, such interest to be computed commencing on the date such payment was due through and including the date of the payment.” The Plaintiff submits that the default interest rate was 12% per annum, and that through January 18, 2007, the total amount due comes to \$660,433.96.

As noted *supra*, the Defendants have not challenged the figure reached by the Plaintiff nor have they addressed this argument. Accordingly, the Court finds that the Defendants owe the Plaintiff \$660,433.96 for failure to pay the Plaintiff rent on the real property from February

2005 through August 2005.

ii) Sums Due After Baker's Rejection of the Real Property Lease Agreement

GD Deal also contends that it has the right to accelerate the payment of rent on the lease and recover from the Defendants all monies that were to become due after Baker rejected the lease agreement. The Plaintiff argues that under Section 28.2.5 of the lease, damages for this amount are calculated by adding up the total accelerated amount of rent payments with a discount factor of 12%, and then subtracting that amount from the present value of the fair market rental values of the real estate at issue. The Plaintiff notes that the present value of the fair market rental values for real estate is also discounted at 12%. As noted *supra*, the Defendants have not challenged this argument in their response.

The Plaintiff asserts that because the original term of the lease was twenty (20) years and three (3) months and that the lease was rejected in August 2005, there are 191 months of rent payments that remain unpaid. Discounting the total amount of rent by the discount factor of 12% over 191 months, the Plaintiff submitted a total discounted accelerated amount of \$7,766,428.97.

However, the Plaintiff contends that under the next step of calculating the damages under Section 28.2.5, subtracting the present value of the fair market rental values for real estate for the future duration of the lease, cannot take place because the Plaintiff cannot properly subtract the fair market rental value since GD Deal has lost its interest in the properties after the foreclosures, and therefore, to the Plaintiff the properties cannot have any future fair market rental value.

The Plaintiff also argues that Section 28.2.5 essentially requires the Plaintiff to mitigate damages under the assumption that under a new lease the landlord would apply any new rent received to the satisfaction of the prior liability of the tenant, in this case Baker. However, the

Plaintiff notes that it could not mitigate damages in this situation because GE Capital would not permit GD Deal to act upon the property during the bankruptcy and foreclosure actions.

Lastly, the Plaintiff contends that language Section 28.2.5 that requires subtraction from total damages is a liquidated damages provision, and that the Court should not apply that provision in this matter because the provision was designed to mirror a general landlord mitigation clause, which was not feasible for the Plaintiff under the circumstances. As such, the Plaintiff requests to recover the sum of \$7,766,428.97, which represents damages for the accelerated amount of rent due at the time of the rejection, discounted at 12% over the applicable time frame, less the subtraction of any future fair market rental value.

In determining the amount of damages the Plaintiff may recover for the default on the lease agreement by the Defendants, the Court must determine whether the Plaintiff has a right to receive accelerated damages under the lease agreement. If it has that right, the Court must then determine whether the provision that requires the Plaintiff to subtract any future fair market rental value is a liquidated damages provision that should not be enforced by the Court, and/or if an alternative measure of damages is more appropriate under the circumstances.

Section 28.2.5 of the lease agreement allows for the Plaintiff to accelerate and recover from the Defendant, stating in pertinent part that "all Rent and other monetary sums due and owing and scheduled to become and owing under this Lease both before *and after* the date of such breach *for the entire* original scheduled Term." (emphasis added). As such, the lease does permit the Plaintiff recover accelerated damages under the lease agreement due to the default by the Defendants.

Determining whether a clause is a liquidated damages provision is matter of law. *Fidelity*

& Deposit Co. of Maryland v. Jones, 75 S.W.2d 1057, 1060 (Ky. Ct. App. 1934). The Sixth Circuit Court of Appeals defines "liquidated damages" as "a definite sum or amount, which has been determined by agreement of the parties or by litigation." *Jewett, Bigelow & Brooks v. Detroit Edison Co.*, 274 F. 30, 32 (6th Cir. 1921). In addition, Courts have held that a liquidated damages provision must not be greatly disproportionate to the injury suffered, in that the amount stated must bear some relation to the actual injury rather than serving as a penalty. *Smith v. Ward*, 256 S.W.2d 385, 387 (Ky. 1953); *Robert F. Simmons and Associates v. Urban Renewal and Community Development Agency of Louisville*, 497 S.W.2d 705, 706 (Ky. 1973); *Mattingly Bridge Co. v. Holloway & Son Construction Co.*, 694 S.W.2d 702, 706 (Ky. 1985); *Man O War Restaurants, Inc. v. Martin*, 932 S.W.2d 366, 369 (Ky. 1996). Further, the actual damages must be difficult to ascertain. *Id.* If the stated amount is substantially higher than the actual injury suffered, the provision will be declared a penalty and not enforceable. *Coca-Cola Bottling Works (Thomas) Inc. v. Hazard Coca-Cola Bottling Works, Inc.*, 450 S.W.2d 515, 518 (Ky. 1970); *Martin*, 932 S.W.2d at 368. Lastly, a party should not recover damages in excess of those set out in a valid liquidated damages provision. *Coca-Cola*, 450 S.W.2d at 519; *see also Island Creek Corp. v. Anker Energy Corp.*, 968 F.2d 1215 (6th Cir. 1992).

In the instant matter, while Section 28.2.5 does entitle the Plaintiff to recover accelerated damages, the section does not contain and/or constitute a liquidated damages provision. First, the section does not specify a set amount of damages that was determined by the parties. Second, assuming that the Plaintiff still retained possession of the properties in question, the actual damages would not be difficult to ascertain, indicating that the parties did not intend the section to qualify as a liquidated damages provision. Here, the reason why the actual damages

are difficult to configure is not because the actual damages are abstract, but instead it is because the Plaintiff is not in possession of the property, and therefore, it cannot determine the future fair market rental value of the properties. Further, even assuming that the section was a liquidated damages provision, the Plaintiff would not be able to recover the amount requested because GD Deal has not subtracted the future fair market rental value, and therefore, the Plaintiff would recover an excess of damages in contrast to those set out in Section 28.2.5. *See Coca-Cola* at 519.

As mentioned *supra*, the Plaintiff also contends that the provision within Section 28.2.5 that requires the subtraction of the fair market rental value mirrors a general obligation of landlord to mitigate damages upon default by a tenant. The Plaintiff correctly points out that where a tenant abandons lease and the possibility to minimize damages is foreclosed, the landlord is under no obligation to mitigate his/her damages. *Abraham v. Gheens*, 205 Ky. 289, 265 S.W. 778 (Ky. Ct. App. 1924); *Ideal Furniture Co. v. Mazer*, 234 Ky. 665, 28 S.W.2d 974 (Ky. Ct. App. 1930); *Jordon v. Nickell*, 253 S.W.2d 237, 238-39 (Ky. 1952); *Fields v. Mullins*, 320 S.W.2d 133 (Ky. 1959); *Illinois Basin Oil Ass'n v. Lynn*, 425 S.W.2d 555, 560 (Ky. 1968). In *Lynn*, the Kentucky Court of Appeals held that when a lessor was foreclosed from taking any steps to mitigate its damages, the trial court was correct in rejecting the mitigation instruction and holding that the lessor did not have a duty to mitigate under the circumstances because he had been foreclosed from doing so. *Lynn* at 560.

Here, similar to *Lynn*, the Plaintiff did not have a duty to mitigate its damages under the circumstances because as soon as the Defendants rejected the lease, GE Capital precluded the Plaintiff from taking any action and/or collecting any rent from the properties. Eventually, the

properties were foreclosed, relinquishing any interest GD Deal had over the properties and foreclosing the Plaintiff from mitigating its damages after the Defendants defaulted on the lease. Accordingly, the Plaintiff had no duty to mitigate its damages under the circumstances because it was foreclosed from taking any steps to do so. As such, the Court now must determine if the provision requiring the subtraction of the fair market rental value within Section 28.2.5 mirrors a mitigation clause; if that provision does mirror and/or constitute a mitigation clause, then the Plaintiff may recover accelerated damages without having to subtract the fair market rental value because the Plaintiff had no duty to mitigate its damages under the circumstances.

The provision in question within Section 28.2.5 states:

there shall be subtracted from such accelerated amounts present value of the fair market rental values of the Properties for the period from the date of acceleration until the date of the remainder of the Term (excluding all unexercised Renewal Periods) using the same discount factor (net of costs reasonably incurred by Landlord to mitigate its damages hereunder). (emphasis added).

Within the provision the last parenthetical section defines “the same discount factor” as the “net of costs reasonably incurred by [the] Landlord to mitigate its damages hereunder.” This implies that the provision in question constitutes a mitigation clause, and therefore, the Plaintiff does need to subtract the fair market rental values from the properties because the Plaintiff was foreclosed from having the opportunity to mitigate damages after the Defendants rejected the leases.

Other jurisdictions have consistently held that a subtraction of the fair market rental value and/or fair market value from a property corresponds with a duty to mitigate on behalf of the landlord following a default by the tenant. *See Lu v. Grewal*, 30 Cal. Rptr.3d 623, 627-28 (Cal. App. 2d 2005)(holding that when a tenant breaches a contract “the correct measure for

mitigation credit is the property's fair market rental value."); *Harrison Riverside Ltd.*

Partnership v. Eagle Affiliates, Inc., 707 A.2d 490, 493 (N.J. Super. App. Div. 1998); *American Nat. Bank and Trust Co. of Chicago v. Hoyne Industries, Inc.*, 1990 WL 114486, *3 (N.D. Ill. July 31, 1990); *Kauder v. Thompson*, 1986 WL 5424, *5 (Ohio Ct. App. 1986); *see also Snell v. Salem Ave. Assoc.*, 111 Ohio App.3d 23, 37-39 (Ohio Ct. App. 1996); *Hill v. Metropolitan Dist. Com'n*, 787 N.E.2d 526, 535 (Mass. 2003); *Ly v. Nystrom*, 615 N.W.2d 302, 307 (Minn. 2000); *National Life Ins. Co. v. Conagra, Inc.*, 1994 WL 924300, *5 (W.D. N.C. October 21, 1994).

Accordingly, the Court finds that the Defendants owe the Plaintiff \$7,766,428.97 in damages for an accelerated amount of rent due after the rejection of the real property lease agreement by the Defendants in August 2005.

3. Damages under the Personal Property (Equipment) Lease

Similar to the real property lease, the Plaintiff claims two (2) sets of damages against the Defendants under the personal property lease: 1) failure to pay rent for the time period prior to the date Baker rejected the lease agreement and 2) sums that would become due after Baker rejected the lease agreement. In their response, the Defendants did not address these arguments nor the figures submitted by the Plaintiff. The Court shall address each claim under the personal property lease separately.

i) Failure to Pay Rent

The Plaintiff contends that from February 2005 through August 2005, the Defendants owe the Plaintiff rent on the personal property. During that time, the Plaintiff submits that during that seven (7) month period the rent per month on the personal property was \$54,822.00. The Plaintiff states that it received \$9,710.62 from the Baker to apply to the rent owed under the

personal property lease. In addition, similar to the real property lease, all delinquent payments accumulate interest at a default rate of 12% per annum. As of January 18, 2007, the Plaintiff claims \$451,223.70 in damages for the failure of the Defendants to pay rent on the personal property lease from February 2005 through August 2005.

As noted *supra*, the Defendants have not challenged the figure reached by the Plaintiff nor have they addressed this argument. Accordingly, the Court finds that the Defendants owe the Plaintiff \$451,223.70 for failure to pay the Plaintiff rent on the personal property from February 2005 through August 2005.

ii) Sums Due After Baker's Rejection of the Personal Property Lease Agreement

GD Deal also contends that it has the right to accelerate and recover from the Defendants all rent monies that were to become due after Baker rejected the personal property lease agreement. Similar to the real property argument analyzed *supra*, the Plaintiff put forth the same arguments as to why it should recover damages from the Defendants for the accelerated amount of rent payments. Section 22.2.5 in the personal property lease contains the exact same language as Section 28.2.25 of the real property lease. Using the same steps and formulas in figuring the rent amount owed under the real property lease, the Plaintiff submits a claim of \$945,098.98 in damages for an accelerated amount of rent due after the rejection of the leases by the Defendants.

As noted *supra*, the Defendants have not challenged the figure reached by the Plaintiff nor have they addressed this argument. Accordingly, the Court finds that the Defendants owe the Plaintiff \$945,098.98 in damages for an accelerated amount of rent due after the rejection of the personal property lease agreement by the Defendants in August 2005.

4. Court Costs, Attorney Fees and Associated Legal Expenses

Both the real property lease and the personal property lease, under Section 28.2.6 and Section 22.2.6, respectively, provide for the recovery of legal expenses to the Plaintiff, regardless of whether or not legal proceedings are actually commenced, so long as the Plaintiff is the prevailing party. As of January 18, 2007, the Plaintiff claims legal fees, including court costs, attorney fees and associated legal expenses, in the amount of \$140,296.04. This includes representing the Plaintiff in: bankruptcy cases in Tennessee and Wisconsin; a case before the Western District of Tennessee; foreclosure cases in over twenty (20) circuit courts throughout the Commonwealth; and two (2) appearances before this Court, including the instant matter. In Kentucky, a party may recover legal expenses if a contract expressly provides for such fees.

Kentucky State Bank v. AG Services, Inc., 663 S.W.2d 754, 755 (Ky. Ct. App. 1984); *Batson v. Clark*, 980 S.W.2d 566, 577 (Ky. Ct. App. 1998); *see also McNutt v. State Farm Mutual Automobile Insurance Company*, 369 F.Supp. 381, 385-86 (W.D.Ky.1973), *aff'd*, 494 F.2d 1282 (6th Cir.1974).

The Defendants have not challenged the figures reached by the Plaintiff nor have they addressed this argument. Accordingly, the Court finds that the Plaintiff is entitled to \$140,296.04 in attorney fees and costs.

The Plaintiff also seeks the recovery of "miscellaneous expenses" it incurred in dealing with the properties because of the default by the Defendants. GD Deal seeks to recover costs it incurred, including: paying taxes on the properties (\$7,147.43); securing compliance with applicable environmental statutes and EPA regulations (\$38,224.36); insurance (\$23,494.02); and repairs (\$15,947.66), for a total of \$84,813.47 in miscellaneous expenses. Fred Higgins, the President of GD Deal, has documented these costs and expenses in an affidavit. While the

Plaintiff does not state how and/or when the default by the Defendants caused the Plaintiff to incur these expenses, it does provide the relevant sections within the real property lease that justify the recovery of these expenses regardless of how and when the costs took place.

Section 7.1 mandates that the landlord (GD Deal) has a net lease with the tenant (Baker) “free of expenses or charges with respect to the Properties, except as provided in this Lease. Tenant shall pay, subject to terms of this Lease, as Additional Rent and discharge before they become delinquent, *all items of expenses*, arising during and pertaining to the Term, from the *operation, maintenance, repair, use or occupancy of the Properties.*” (emphasis added).

Section 7.2.1 states, in pertinent part, that the “[t]enant shall pay and discharge, before delinquency, all Impositions. Tenant shall pay all interest and penalties assessed by any Government on account of late payment of any imposition.” Under the “definitions” section on page 6, the real property lease defines “impositions” as “all taxes, special and general assessments, water rents, rates and charges, commercial rent taxes, all charges for utility telecommunication services, all sales, gross receipts and other taxes, duties or imposts...levies fees and other impositions and charges of every nature and kind.”

Section 11.1.2 requires that the tenant keep the properties “free and clear of all environmental liens, whether due to any act or omission of Tenant or any other person.” Section 14.1, entitled “Indemnification by Tenant,” is a “catch-all” provision that requires the tenant to indemnify the landlord “from and against any and all losses.” Lastly, Section 15.1-15.5 mandates the tenant to maintain insurance on the properties.

The Defendants have not challenged the figure reached by the Plaintiff nor have they addressed this argument. Accordingly, the Court finds that the Plaintiff is entitled to \$84,813.47

in miscellaneous costs associated with the Defendants' breach of the real property lease.

5. Overpayment of Rent Owed to the Plaintiff - Counterclaim of Baker

In Baker's answer to the Plaintiff's complaint (Docket #3), Baker asserted that the Plaintiff breached its lease agreement with Baker by overcharging the Defendant \$752,253.82 in rent. In their response to the Plaintiff's motion for summary judgment (Docket #83), Defendants Sharma and Multani also state that as of January 2005, GD Deal had overcharged Baker in excess of \$752,253.82. Though the Defendants do not elaborate on this issue except to state that the overcharge caused the Defendants "severe financial distress," the Plaintiff devotes a substantial part of its twenty-six (26) page reply (Docket #85) to this matter. The Plaintiff offers a detailed history of the transactions between CRE, the entity who entered into the original lease agreement with GD Deal, and Girkin Development LLC ("Girkin"), who worked with GD Deal on leasing the properties in 2001 and is a co-Plaintiff in this matter. The Plaintiff offers a thorough explanation both addressing and disproving the allegation of the overcharge, countering the argument put forth by the Defendants in their answer to the complaint and response to the motion for summary judgment, respectively.

Baker has not responded to the Plaintiff's motion for summary judgment. Further, none of the Defendants have provided any evidence to support the claim that the Plaintiff overcharged Baker in excess of \$752,253.82. Under FRCP 56, the Supreme Court has held that a party must present more than a mere scintilla of evidence in order for the claim to survive a motion for summary judgment. *Anderson v. Liberty Lobby*, 477 U.S. 242, 251-52 (1986). At this juncture, the Defendants have not met their burden in sustaining their counterclaim against the Plaintiff because the Defendants have not provided any evidence or arguments to support their assertion.

Accordingly, the Court finds that the Defendants' counterclaim that the Plaintiff overcharged them rent fails as a matter of law.

CONCLUSION

For the foregoing reasons, the Plaintiff's Motion for Summary Judgment is **GRANTED**. The Court finds that the Defendants owe the Plaintiff **\$660,433.96** for failure to pay the Plaintiff rent on the real property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff **\$7,766,428.97** in damages for an accelerated amount of rent due after the rejection of the real property lease agreement by the Defendants in August 2005. The Court finds that the Defendants owe the Plaintiff **\$451,223.70** for failure to pay the Plaintiff rent on the personal property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff **\$945,098.98** in damages for an accelerated amount of rent due after the rejection of the personal property lease agreement by the Defendants in August 2005. The Court finds that the Plaintiff is entitled to **\$140,296.04** in attorney fees and costs. The Court finds that the Plaintiff is entitled to **\$84,813.47** in miscellaneous costs associated with the Defendants' breach of the real property lease. Lastly, the Defendants' counterclaim against the Plaintiff for breach of the lease agreement fails as a matter of law.

Accordingly, the Plaintiff shall recover **\$10,048,295.12** in damages from the Defendants for their breach and default of the real property and personal property leases.

An appropriate order shall issue.

May 11, 2007



Thomas B. Russell, Judge
United States District Court

JUDGE GRADY MAGISTRATE JUDGE BROWN

3315 (Rev. 6/11/02) CCG 0015

Memorandum of Judgment

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

G.D. DEAL HOLDINGS, INC. et al.

v.

BAKER ENERGY, INC., et al.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF ILLINOIS0728260163
Doc#: 0728260163 Fee: \$28.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 10/09/2007 04:22 PM Pg: 1 of 3

Recorder's Stamp

07 CV 04965
No. _____

and U.S.D.C., Western District of KY, Bowling Green Division, Court No.: 1:05-CV-3-R

MEMORANDUM OF JUDGMENT

On May 11, 2007, judgment was entered in courtin favor of the plaintiff G.D. Deal Holdings, Inc., (see attached judgment order entered in Bowling Green
Division, Western District of KY)and against defendant Surinder Multaniwhose address is 124 Bright Ridge Drive, Schaumburg, IL 60194-3696, Parcel No. 07 23 102 021 0000
in the amount of \$ 10,048,295.12.Atty. No.: 04933

Judge

Judge's No.

Name: Michael Ripani, Williams Montgomery & JohnPlaintiff

Atty. for: _____

Address: 20 North Wacker DriveCity/State/Zip: Chicago, IL 60606Telephone: 312-443-3206

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILL.

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CASE NO.: 1:05-CV-3-R

G.D. DEAL HOLDINGS, INC., et. al.,

PLAINTIFFS

v.

BAKER ENERGY, INC, et. al.,

DEFENDANTS

ORDER

IT IS SO ORDERED:

The Plaintiff's Motion for Summary Judgment (Docket #77) is **GRANTED**. The Court finds that the Defendants owe the Plaintiff \$660,433.96 for failure to pay the Plaintiff rent on the real property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff \$7,766,428.97 in damages for an accelerated amount of rent due after the rejection of the real property lease agreement by the Defendants in August 2005. The Court finds that the Defendants owe the Plaintiff \$451,223.70 for failure to pay the Plaintiff rent on the personal property from February 2005 through August 2005. The Court finds that the Defendants owe the Plaintiff \$945,098.98 in damages for an accelerated amount of rent due after the rejection of the personal property lease agreement by the Defendants in August 2005. The Court finds that the Plaintiff is entitled to \$140,296.04 in attorney fees and costs. The Court finds that the Plaintiff is entitled to \$84,813.47 in miscellaneous costs associated with the Defendants' breach of the real property lease. Lastly, the Defendants' counterclaim against the Plaintiff for breach of the lease agreement fails as a matter of law.

Accordingly, the Plaintiff shall recover \$10,048,295.12 in damages from the Defendants for their breach and default of the real property and personal property leases.

May 11, 2007


Thomas B. Russell

Thomas B. Russell, Judge
United States District Court

HARNED, BACHERT & DENTON, LLP

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W. GREG HARVEY
WILLIAM F. CODELL

Telephone:
(270) 782-3938
Facsimile:
(270) 781-4737

Codell@hbd-law.com

August 30, 2007

Michael W. Dobbins
Clerk of US District Court
Everett McKinley Dirksen Building
219 South Dearborn Street
Chicago, IL 60604

RE: Registration of District Court Judgment of Another District

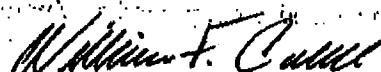
Dear Mr. Dobbins:

You are hereby requested to register promptly in your district pursuant to Title 28, Section 1963 of the United States Code a judgment rendered and entered in Civil Action Number 1:05-CV-3-R, by the United States District Court for the Western District of Kentucky, Bowling Green Division, on May 11, 2007, in favor of GD Deal Holdings, LLC and Girkin Development, LLC (on whose behalf the registration is requested) and against Baker Energy, Inc., Rohit Sharma, and Surinder Multani. The judgment is for the recovery of money, as more fully shown by the enclosed certified copy of the judgment. The United States District Court for the Western District of Kentucky has found good cause to register the judgment in other districts pending appeal as shown by the enclosed certified copy of the order allowing registration of the judgment. Additionally enclosed, please find a check in the amount of \$39.00 to cover the filing fee for the registration of the judgment.

You are requested to notify the undersigned, attorney for GD Deal Holdings, LLC and Girkin Development, LLC, at the address set out above as soon as the registration is effected in order that enforcement of the judgment in your district may be expedited. Thank you for your attention to this matter.

Very truly yours,

HARNED, BACHERT & DENTON, LLP



William F. Codell

07CV4965
JUDGE KENNELLY
MAG. JUDGE VALDEZ

enclosure

FAK 630-940-1744

Personal Financial Statement



YOU MAY APPLY FOR A CREDIT EXTENSION OR FINANCIAL ACCOMMODATION INDIVIDUALLY OR JOINTLY WITH A CO-APPLICANT. THIS STATEMENT AND ANY APPLICABLE SUPPORTING SCHEDULES MAY BE COMPLETED JOINTLY BY BOTH MARRIED AND UNMARRIED CO-APPLICANTS IF THEIR ASSETS AND LIABILITIES ARE SUFFICIENTLY JOINED SO THAT THE STATEMENT CAN BE MEANINGFULLY AND FAIRLY PRESENTED ON A COMBINED BASIS; OTHERWISE SEPARATE STATEMENTS AND SCHEDULES ARE REQUIRED.

APPLICANT:

NAME: SAPANPREET KAUR KHUCLAN SOCIAL SECURITY #

ADDRESS: 24-BRIGHT RIDGE DR., SCHAUMBURG, IL-60194

TELEPHONE NUMBER (202) 452-1000 DATE OF SURVEY

PRESENT EMPLOYER ABBE MANAGEMENT LTD. POSITION 1

ADDRESS 1450 - E - AMERICAN LANE, SUITE - 1400 - IL-60173 SCHAUMBURG

CO-APPLICANT

NAME SURINDER P S .MULTANI. SOCIAL SECURITY #

ADDRESS same

TELEPHONE NUMBER

DATE OF BIRTH

PRESENT EMPLOYER ABC MANAGEMENT GROUP-LLC
POSITION

ADDRESS 1450 - E - AMERICAN LANE, SUITE 2 - 1450 - E - L - 60173

ATTACHED

DATE OF VALUATION

* Round all amounts to the nearest \$100

* Attach separate sheet if you need more space to complete detail schedule

ASSETS	AMOUNT	LIABILITIES	AMOUNT
Cash in the Bank		Notes Payable Banks (Schedule 7)	
Cash in Other Banks (Detail)		Notes Payable Others (Schedule 7)	
		Installment Contracts Payable (Schedule 7)	
		Auto Dept, Stores, Credit Cards & Others	
Dues from Friends, Relatives & Others (Schedule 3)		Income Taxes Payable	
Mortgage & Contracts for Deed Owned (Schedule 8)		Other Taxes Payable	
Securities Owned (Schedule 3)		Loans on Life Insurance (Schedule 4)	
Cash Surrender Value of Life Insurance (Schedule 4)		Mortgage on Home/land (Schedule 5)	
Home/land (Schedule 5)		Mortgage or Liens on Other Real Estate Owned (Schedule 8)	
Other Real Estate Owned (Schedule 5)		Other Liabilities (Detail)	
Automobiles			
Personal Property			
Other Assets (Detail)			
		TOTAL LIABILITIES	
		Net Worth (Total Assets Less Total Liabilities)	
	TOTAL		TOTAL

ANNUAL INCOME	APPLICANT	CO-APPLICANT	CONTINGENT LIABILITIES
Salary			As Executor
Commission			As Administrator
Dividends			Law Suite
Interest			Not Taxes
Rentals			Other (Detail)
Alimony, child support or maintenance (you need not show this unless you wish me to consider it).			
Other			<input type="checkbox"/> Check here if "None"
TOTAL INCOME			TOTAL CONTINGENT LIABILITIES

SCHEDULE 1 DUE FROM FRIENDS, RELATIVES & OTHERS

Name of Debtor	Owed To	Collector	How Payable	Maturity Date	Unpaid Balance
			\$ per		
			\$ per		
			\$ per		

TOTAL

Name of Debtor	Type of Property	1st or 2nd Lien	Owed To	How Payable	Unpaid Balance
				\$ per	
				\$ per	
				\$ per	
				\$ per	

TOTAL

06/16/2006 18:01 18474198032

OFFICEMAX

PAGE 03

ATTACHED

Should a securities owner

CHICAGO LIFE INSURANCE

SCHÉMA DE PLAN D'ACTION

Address and Type of Property	Title or Name(s) of	Monthly Interest	Cost Year Acquired	Present Market Value	Amount of Insurance
Residence			\$		
			Year		
			\$		
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SCHEDULE OF MORTGAGE OF LING ON REAL PROPERTY

To Whom Payable	How Payable	Interest Rate	Maturity Date	Unpaid Balance
John Doe	per			
	per			

CONFIDENTIAL NOTES PAYABLE BANKS AND OTHERS AND NOTES PAYABLE AND OTHERS

06/16/2006 18:01 18474190032

OFFICEMAX

PAGE 04

Have you ever gone through bankruptcy or had a judgment against you?

APPLICANT

Yes No

CO-APPLICANT

Yes No

Are any assets pledged or debts secured except as shown?

Yes No

Yes No

Have you made a will?

Yes No

Yes No

Number of dependents
(If "none" check none)

4 None

1 None

Marital Status (answer only if this financial statement is provided in connection with a request for secured credit or applicant is seeking a joint account with spouse.)

Married

Married

Separated

Separated

Unmarried

Unmarried

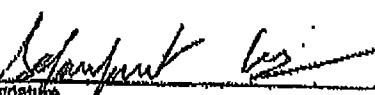
(Unmarried includes single, divorced, widowed)

The foregoing statement, submitted for the purpose of obtaining credit, is true and correct in every detail and fairly shows my/our financial condition at the time indicated. I/we will give you prompt written notice of any subsequent substantial change in such financial condition occurring before discharge of my/our obligations to you. I/we understand that you will retain this personal financial statement whether or not you approve the credit in connection with which it is submitted. You are authorized to check my/our credit and employment history or any other information contained herein.

THE UNDERSIGNED CERTIFY THAT THE INFORMATION CONTAINED ON THIS FORM HAS BEEN CAREFULLY REVIEWED AND THAT IT IS TRUE AND CORRECT IN ALL RESPECTS.

Date

Your Signature



Date

Co-Applicant Signature if you are requesting the financial security (co-borrower, joint)



Member
FDIC



PERSONAL FINANCIAL STATEMENT

IMPORTANT: Read these directions before completing this Statement

If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Section 1 and Section 2 and continue

If you are applying for joint credit with another person, complete all sections providing information in Section 2 about the joint applicant. We intend to apply for joint credit

Savannah K. Mullani

Applicant

Audrey P. Mullani

Co-Applicant

If you are applying for individual credit but are relying on income from alimony, child support or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all sections, providing information in Section 2 about the person upon whose alimony, child support, or maintenance payments or income or assets you are relying

SECTION 1 - INDIVIDUAL INFORMATION

Name: (Savannah, Kari Mullani)
Residence Address: 24 Bright Ridge Drive
City, State & Zip: Schaumburg, IL - 60194

Position or Occupation: Partner

Business Name:

Business Address:

City, State & Zip:

Res Phone: Bus Phone:

Driver's License No:

State:

Date Issued:

07/12/04

SECTION 2 - OTHER PARTY INFORMATION

Name: Mr. Suninder Mullani
Residence Address: 24 Bright Ridge Drive
City, State & Zip: Schaumburg, IL - 60194

Position or Occupation:

Business Name:

Business Address:

City, State & Zip:

Res Phone:

Bus Phone:

State: IL

Date Issued:

09/03/01

Expiration Date: 01/30/09

Expiration Date: 09/07/08

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF 20

ASSETS	In Dollars (Enter cents)	LIABILITIES	In Dollars (Enter cents)
Cash on Hand and in Banks	\$ 102,000	Notes Payable to Banks - Secured	
U.S. Govt & Marketable Securities		Notes Payable to Banks - Unsecured	
Non Marketable Securities		Due to Broker	
Securities held by Broker		Amounts Payable to others - Secured	\$ 100,400
Restricted or Control accounts		Amounts Payable to others - Unsecured	\$ 51,480
Partial Interest in Real Estate Equities		Accounts and Bills Due	
Real Estate Owned	\$ 1,500,000	Unpaid Income Tax	
Leads Receivable	\$ 310,000	Other Unpaid Taxes and Interest	
Automobiles and Personal Property	\$ 142,000	Real Estate mortgage payable	
Cash Value - Life Insurance	\$ 12,000	Other Debts	\$ 1,288,000
Other Assets		Charge Accounts	\$ 114,000
Retirement Accounts	\$ 80,000		
Furniture and Jewellery	\$ 780,000		
Interest in Corporations	\$ 5,000,000	Total Liabilities	\$ 1,888,880
Total Assets	\$ 8,628,800	Net Worth	\$ 7,007,980
		Total Liabilities and Net Worth	\$ 8,628,800

SOURCES OF INCOME FOR YEAR END 2006			PERSONAL INCOME
Salary, bonuses & commissions	\$ 185,400		Do you have a will? Yes, if yes, name of executor
Dividends			
Real Estate Income			
Other Income			Are you a partner or officer in any other ventures?
(Alimony, Child Support etc.)			
Distribution from companies	\$ 680,000		
			Are you obliged to pay alimony, child support or separate maintenance payments?
Total	\$ 765,400		N/A
CONTINGENT LIABILITIES			Are any assets pledged other than as described on Schedule A?
Do you have contingent liabilities? If so describe			
			Income Tax settled through date _____
Are you a creditor, co-maker or co-borrower?			
Obligations or contracts?			Are you a defendant in any suits or legal actions?
Legal Obligations			N/A
			Personal bank accounts carried at:
			American Chartered Bank, CityBank
			Have you ever been declared bankrupt? If so describe.
			N/A

SCHEDULE A - U.S. GOVERNMENT & MARKETABLE SECURITIES					
Number of Shares or Face Value (Bonds)	Description	In Name of	Are These Pledged?	Market Value	

SCHEDULE B - NON MARKETABLE SECURITIES					
Number of Shares	Description	In Name of	Are these Pledged?	Source of Value?	Value
N/A	Promissory Note - Excellent Petroleum		N/A		
N/A	Promissory Note - Sisha Inc		N/A		\$ 477,000
N/A	Promissory Note - Almanehu Raloje		N/A		\$ 61,000
					\$ 52,000

SCHEDULE C - PARTIAL INTEREST IN REAL ESTATE EQUITIES						
Address & Type of Property	Title- Owner	% of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity

SCHEDULE D - REAL ESTATE OWNED					
Address & Type of Property	Title- Owner	Date Acquired	Cost	Market Value	Mortgage Maturity
24 Bright Ridge Drive	S.P. Singh	1/1	\$ 1,870,000	\$ 3,200,000	LOC
Schaumburg, IL - 60194	Land Balvirpreet Kaur				

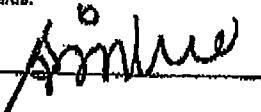
SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.B.L.I. AND GROUP INSURANCE					
Name of Insurance Comp.	Owner of Policy	Beneficiary	Face Amount	Policy Loans	Orth Surrender Value
New York Life	S.P. Singh - Whole	Balvirpreet Kaur	\$ 100,000		
New York Life	S.P. Singh - Term	Balvirpreet Kaur	\$ 1,000,000		\$12,000
Jackson National Life	S.P. Singh - Term	Balvirpreet Kaur	\$ 300,000		N/A
					N/A

Jackson National Life	S.P. Singh - Term	S.P. Singh	\$ 1,000,000	N/A
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SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED					
Name and Address of Lender	Credit in the name of	Secured or Unsecured	Original Date	High Credit	Current Balances

The information contained in this statement is provided for the purposes of obtaining or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guarantee in favor. Each undersigned understands that you are relying on the information provided herein in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as constituting to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Date Signed _____

Signature _____
(Individual)

S.S. No. _____ Date of Birth _____

Signature _____
(Other Party)

S.S. No. _____ Date of Birth _____

Supplement to Personal Financial Statement

ASSETS	Amount	LIABILITIES	Amount
Automobiles		Automobiles (Secured Notes)	
Range Rover 2005	\$ 71,000	Range Rover 2005	\$ 48,500
Mercedes S600 2003	\$ 39,000	BMW 325iX	\$ 28,200
Mitsubishi SUV 2006	\$ 32,000	Mitsubishi SUV 2005	\$ 23,700
Total	\$ 142,000	Total	\$ 100,400
Other Assets		Credit Card Payables	
Furniture and Household Effects	\$ 600,000	Chase	\$ 11,000
Jewelry	\$ 180,000	Citibank	\$ 1,100
Total	\$ 780,000	MBNA	\$ 16,000
		MBNA	\$ 7,500
		Discover	\$ 9,850
		Chase	\$ 7,000
Retirement Accounts		Total	\$ 51,460
401 K Allianz Life Insurance	\$ 40,000	Charge Account	
401 K Allianz Life Insurance	\$ 40,000	Marshall Field	\$ 114,000
Total	\$ 80,000		
Stock Ownership			
80 % Owner	\$ 3,800,000		
abo Corp			
(FMV of Credit Card Processing Business)			
60% Shareholders In	\$ 1,500,000		
Sapphire Supply LLC			
(Gasoline Distribution Company)			

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OFFICEMAX

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PERSONAL FINANCIAL STATEMENT

IMPORTANT: Read these directions before completing this statement

If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit, complete Section 1 and Section 2 and continue

If you are applying for joint credit with another person, complete all Sections providing information in Section 2 about the joint applicant. We intend to apply for joint credit

Suzanne R. Mullens

Suzanne R. Mullens

Co-Applicant

If you are applying for individual credit but are relying on income from alimony, child support or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all Sections providing information in Section 2 about the person upon whose alimony, child support, or maintenance payments or income or assets you are relying.

SECTION 1 - INDIVIDUAL INFORMATION

Name: Suzanne R. Mullens

Residence Address: 24 Bright Ridge Drive

City, State & Zip: Schaumburg, IL - 60193

Position or Occupation: Partner

Business Name:

Business Address:

City, State & Zip:

Bus Phone:

Driver's License No:

Date Issued:

Expiration Date:

SECTION 2 - OTHER PARTY INFORMATION

Name: Mr. Suzanne Mullens

Residence Address: 24 Bright Ridge Drive

City, State & Zip: Schaumburg, IL - 60193

Position or Occupation:

Business Name:

Business Address:

City, State & Zip:

Bus Phone:

Driver's License No:

Date Issued: 09/08/04

Expiration Date: 09/07/05

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF

ASSETS	IN DOLLARS	LIABILITIES	IN DOLLARS
Cash in Banks and in Bonds	\$ 405,000	Notes Payable to Banks - Secured	
U.S. Govt & Marketable Securities		Notes Payable to Banks - Unsecured	
Non Marketable Securities		Due to Brokers	
Investments held by Broker		Amounts Payable to Others - Secured	\$ 128,000
Reserve or Control accounts		Amounts Payable to Others - Unsecured	\$ 41,000
Partial Interest in Real Estate Equities		Amounts and Bills Due	
Real Estate Owned	\$ 2,300,000	Unpaid Income Tax	
Land Received	\$ 210,000	Other Unpaid Taxes and Interest	
Automobiles and Personal Property	\$ 107,000	Real Estate Mortgages Payable	
Life Value - Life Insurance	\$ 10,000	Other Debts	\$ 1,200,000
Other Assets		Charges Accounts	\$ 114,000
Retirement Accounts	\$ 80,000		
Furniture and Jewelry	\$ 700,000		
Interest in Corporations	\$ 5,000,000	Total Liabilities	\$ 7,877,600
Total Assets	\$ 8,007,000	Net Worth	\$ 7,528,200
		Total Assets and Net Worth	\$ 15,507,600

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OFFICEMAX

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SOURCES OF INCOME FOR YEAR END 2005			PERSONAL INCOME Do you have a will? Yes, if so, name of executor				
Salary, bonuses & commissions	R	128,000					
Dividends	R						
Real Estate Income	R						
Other Income	R						
Alimony, Child Support etc.	R						
Distribution from companies	R	850,000					
	R						
	R						
Total	R	878,000					
CONTINGENT LIABILITIES			Are you a partner or officer in any other ventures?				
Do you have contingent liabilities? If so describe							
SCHEDULE A - U.S. GOVERNMENT & MARKETABLE SECURITIES			Income Tax settled through date				
Number of Shares or Face Value (Bonds)	Description	In Name of	Are These Pledged? Market Value				
SCHEDULE B - NON-MARKETABLE SECURITIES							
Number of Shares	Description	In Name of	Are These Pledged? Source of Value? Value				
N/A	Promissory Note - Excellent Petroleum		N/A				
N/A	Promissory Note - Sura Inc		N/A				
N/A	Promissory Note - Hambrecht Retail		N/A				
SCHEDULE C - PARTIAL INTEREST IN REAL ESTATE PROPERTIES							
Address & Type of Property	Title Owner	% of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
SCHEDULE D - REAL ESTATE OWNED							
Address & Type of Property	Title Owner	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount	
24 Bright Ridge Drive Salemburg, NJ 08074	S.P. Singh and Sumanpreet Kaur	7/1	\$ 1,670,000	\$ 2,200,000	100	\$ 1,800,000	
SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.Y.L.I. AND GROUP INSURANCE							
Name of Insurance Comp.	Owner of Policy	Beneficiary	Paid Amount	Policy Loans	Crash Surrender Value		
New York Life	S.P. Singh - Whole	Sumanpreet Kaur	\$ 100,000		\$ 12,000		
New York Life	S.P. Singh - Term	Sumanpreet Kaur	\$ 1,000,000		N/A		
Jackie's National Life	S.P. Singh - Term	Sumanpreet Kaur	\$ 1,000,000		N/A		

SCHEDULE A - U.S. GOVERNMENT & MARKETABLE SECURITIES			Income Tax settled through date				
Number of Shares or Face Value (Bonds)	Description	In Name of	Are These Pledged? Market Value				
SCHEDULE B - NON-MARKETABLE SECURITIES							
Number of Shares	Description	In Name of	Are These Pledged? Source of Value? Value				
N/A	Promissory Note - Excellent Petroleum		N/A				
N/A	Promissory Note - Sura Inc		N/A				
N/A	Promissory Note - Hambrecht Retail		N/A				
SCHEDULE C - PARTIAL INTEREST IN REAL ESTATE PROPERTIES							
Address & Type of Property	Title Owner	% of Ownership	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount
SCHEDULE D - REAL ESTATE OWNED							
Address & Type of Property	Title Owner	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount	
24 Bright Ridge Drive Salemburg, NJ 08074	S.P. Singh and Sumanpreet Kaur	7/1	\$ 1,670,000	\$ 2,200,000	100	\$ 1,800,000	
SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.Y.L.I. AND GROUP INSURANCE							
Name of Insurance Comp.	Owner of Policy	Beneficiary	Paid Amount	Policy Loans	Crash Surrender Value		
New York Life	S.P. Singh - Whole	Sumanpreet Kaur	\$ 100,000		\$ 12,000		
New York Life	S.P. Singh - Term	Sumanpreet Kaur	\$ 1,000,000		N/A		
Jackie's National Life	S.P. Singh - Term	Sumanpreet Kaur	\$ 1,000,000		N/A		

Jackson National Life	S.P. Singh & Sons	S.P. Singh	\$1,000,000	N/A
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SCHEDULE E - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name and Address of Lender	Credit in the Name of	Secured or Unsecured	Original Date	High Credit	Current Balance Due

The information contained in this statement is provided for the purposes of obtaining or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a generally in favor. Each undersigned understands that you are relying on the information provided herein in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our creditworthiness. You are authorized to answer questions about your credit experience with me/us.

Date Signed 12-28-05Signature _____
(Individual)

S.S. No. _____ Date of Birth. _____

Signature _____
(Other Party)

S.S. No. _____ Date of Birth _____

S.P. Singh
 Supplement to Personal Financial Statement
 30-Sep-06

ASSETSLIABILITIES

Automobiles

Range Rover 2005	\$80,000
Mercedes S800 2003	\$42,000
Mitsubishi SUV 2005	<u>\$35,000</u>
	\$157,000

Automobiles (Secured Notes)

Range Rover 2005	\$66,000
BMW X5	\$30,000
Mitsubishi SUV 2005	<u>\$93,000</u>
	\$129,000

Other Assets

Furniture and Household Effects	\$600,000
Jewelry	<u>\$180,000</u>
	\$780,000

Credit Card Payables

Chase	\$11,000
Citibank	\$1,100
MBNA	\$16,000
MBNA	\$7,500
Chase	<u>\$7,000</u>

Retirement Accounts

401 (K) Allianz Life Insurance	\$40,000
401 (K) Allianz Life Insurance	\$40,000
	<u>\$0</u>
	\$80,000

Charge Account

Marshall Fields	<u>\$114,000</u>
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Stock Ownership

80% Owner	\$3,600,000
ABBE Management Group LLC (FMV of Credit Card Processing Business)	
80% Shareholders in Sapphire Supply LLC (Gasoline Distribution Company)	\$1,800,000

PERSONAL FINANCIAL STATEMENT

IMPORTANT: Read these directions before completing this Statement

If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Section 1 and Section 2 and continue

If you are applying for joint credit with another person, complete all sections providing information in Section 2 about the joint applicant
We intend to apply for joint credit

Satpreet K. Mullan

Applicant

Surinder P. Mullan

Co-Applicant

If you are applying for individual credit but are relying on income from alimony, child support or separate maintenance or on the income or assets of another person as a basis for repayment of the credit requested, complete all sections, providing information in Section 2 about the person upon whose alimony, child support, or maintenance payments or income or assets you are relying

SECTION 1 - INDIVIDUAL INFORMATION

Name: Satpreet Kaur Mullan
 Residence Address: 24 Bright Ridge Drive
 City, State & Zip: Schaumburg, IL - 60194
 Position or Occupation: Partner
 Business Name:
 Business Address:
 City, State & Zip:
 Res Phone: Bus Phone:

Driver's Licence No.:

Date Issued: 7/12/2004

Expiration Date: 01/30/06

SECTION 2 - OTHER PARTY INFORMATION

Name: Mr. Surinder Mullan
 Residence Address: 24 Bright Ridge Drive
 City, State & Zip: Schaumburg, IL - 60194
 Position or Occupation:
 Business Name:
 Business Address:
 City, State & Zip:
 Res Phone: Bus Phone:

Driver's Licence No.:

Date Issued: 09/03/04

Expiration Date: 09/07/06

SECTION 3 - STATEMENT OF FINANCIAL CONDITION AS OF 20

ASSETS	In Dollars (Omit Cents)	LIABILITIES	In Dollars (Omit Cents)
Cash on hand and in bank	\$ 278,300	Notes Payable to Banks - Secured	
U.S. Govt & Marketable Securities		Notes Payable to Banks - Unsecured	
Non Marketable Securities		Due to Brokers	
Securities held by Broker		Amounts Payable to others - Secured	\$ 67,000
Restricted or Control accounts		Amounts Payable to others - Unsecured	\$ 34,000
Partial Interest in Real Estate Equities		Accounts and bills due	
Real Estate Owned	\$ 2,200,000	Unpaid Income Tax	
Loans Redeliverable	\$ 258,000	Other unpaid taxes and interest	
Automobiles and Personal Property	\$ 104,000	Real Estate mortgages payable	\$ 1,203,000
Cash Value - Life Insurance	\$ 12,000	Other Debts	
Other Assets			
Retirement Accounts	\$ 80,000	Charge Accounts	\$ 65,000
Furniture and Jewellery	\$ 780,000		
Interest in Corporations	\$ 5,000,000	Total Liabilities	\$ 1,489,000
Total Assets	\$ 8,688,300	Net Worth	\$ 7,197,300
		Total Liabilities and Net Worth	\$ 8,688,300

SOURCES OF INCOME FOR YEAR END 2005			PERSONAL INCOME
Salary, bonuses & commissions	\$ 168,400		
Dividends			
Real Estate Income			
Other Income			
(Alimony, Child Support, etc.)			Are you a partner or officer in any other ventures?
Distribution from companies	\$ 310,311		
			Are you obliged to pay alimony, child support or separate maintenance payments?
Total	\$ 465,711		N/A
CONTINGENT LIABILITIES			
Do you have contingent liabilities? If so describe			Are any assets pledged other than as described on Schedules
			Income Tax settled through date _____
Am endorser, co-maker or guarantor?			
On leases or contracts?			Are you a defendant in any suits or legal actions
Legal Claims			N/A
			Personal bank accounts carried at:
			American Chartered Bank, Citibank
			Have you ever been declared bankrupt? If so describe
			N/A

SCHEDULE A - U.S. GOVERNMENT & MARKETABLE SECURITIES				
Number of Shares or Face Value (Bonds.)	Description	In Name of	Are These Pledged?	Market Value

SCHEDULE B - NON MARKETABLE SECURITIES					
Number of Shares	Description	In Name of	Are these Pledged?	Source of Value?	Value
N/A	Promissory Note - Excellent Petroleum				
N/A	Promissory Note - Aldra Inc		N/A		
N/A	Promissory Note - Hinanshu Rataja		N/A		\$ 168,000
			N/A		\$ 70,000

SCHEDULE D - REAL ESTATE OWNED						
Address & Type of Property	Name, Owner	Date Acquired	Cost Acquired	Market Value	Mortgage Maturity	Mortgage Amount
24 Bright Ridge Drive Schamberg, IL - 60194	S.P. Singh and Satinderpreet Kaur	1/4	\$ 1,670,000	\$ 2,200,000	LOC	\$ 1,200,000 \$ 63,000

SCHEDULE E - LIFE INSURANCE CARRIED, INCLUDING N.S.L.I. AND GROUP INSURANCE					
Name of Insurance Comp	Owner of Policy	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value
New York Life	S.P. Singh - Whole	Safanpreet Kaur	\$ 100,000		
New York Life	S.P. Singh - Term	Safanpreet Kaur	\$ 1,000,000		\$12,000
Jackson National Life	S.P. Singh - Term	Safanpreet Kaur	\$ 1,000,000		N/A
					N/A

Jackson National Life	G.P. Singh - Term	S.P. Singh	\$ 1,000,000		N/A
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SCHEDULE F - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

Name and Address of Lender	Credit in the name of	Secured or Unsecured	Original Date	High Credit	Current Balances

The information contained in this statement is provided for the purposes of obtaining or maintaining credit with you on behalf of the undersigned, or persons, firms or corporations in whose behalf the undersigned may either severally or jointly with others, execute a guarantee in favor. Each undersigned understands that you are relying on the information provided herein in deciding to grant or continue credit. Each undersigned represents and warrants that the information provided is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given to you by the undersigned. You are authorized to make all inquiries you deem necessary to verify the accuracy of the statements made herein, and to determine my/our credit worthiness. You are authorized to answer questions about your credit experience with me/us.

Date Signed 07-01-07Signature Jaspal Singh
(Individual)

S.S. No. _____ Date of Birth _____

Signature Jaspal Singh
(Other Party)

S.S. No. _____ Date of Birth _____

Supplement to Personal Financial Statement

ASSETS	Amount	LIABILITIES	Amount
Automobiles		Automobiles (Secured Notes)	
Range Rover 2006	\$ 68,000	Range Rover 2005	\$ 43,000
Mercedes S500 2003	\$ 36,000	BMW 326iX	\$ 24,000
<hr/>	<hr/>	<hr/>	<hr/>
Total	\$ 104,000	Total	\$ 67,000
Other Assets		Credit Card Payables	
Furniture and Household Effects	\$ 600,000	Chase	\$ 11,000
Jewelry	<u>\$ 180,000</u>	Citibank	\$ 1,100
<hr/>	<hr/>	MBNA	\$ 7,400
Total	\$ 780,000	MBNA	\$ 7,500
		Discover	
		Chase	<u>\$ 7,000</u>
		<hr/>	<hr/>
Retirement Accounts		Total	\$ 34,000
401 K Allianz Life Insurance	\$ 40,000	Charge Account	
401 K Allianz Life Insurance	<u>\$ 40,000</u>	Marshall Field	<u>\$ 96,000</u>
<hr/>	<hr/>	<hr/>	<hr/>
Total	\$ 80,000		
Stock Ownership			
50 % Owner	\$ 8,500,000		
abc Corp			
(FMV of Credit Card Processing Business)			
<hr/>	<hr/>		
50% Shareholders In	\$ 1,600,000		
Sapphire Supply LLC			
(Gasoline Distribution Company)			

Nov 24 06 34:42p

U.S. Service Center 014
P.O. Box 768013
San Antonio, TX 78265-9013

SURVIVOR P MURKANT
SARANGKET X MURKANT
24 BRIGGETTIDGE DR
SCHAUMBURG IL 60194-3695

000
CITIBANK, F.S.B.
Amman

Page 1 of 2

CHUBB ACCOUNT SUMMARY

Checking	\$1,000.00
Savings	\$1,000.00
Investments: (not FDIC insured)	
Loans	
Credit Cards	\$0.00

Get cash back with the Citibank Dividend Platinum.

until 12/24/87. A low 13.24% APR thereafter. For more information, see enclosed insert. To apply, call 1-800-813-8367 and start saving. *Interest-only by 11/15/87* does not extend. Premium Selection is issued by Citibank/North America, N.Y.

Regular Checking		Balance: \$ 213,610.51	
Loans			
Checking Plus (as of 11/02/05)	Credit Line \$1,500.00	Amount Available \$1,500.00	Amount You Owe \$0.00

On October 1, 2006, Citibank, FSB; Citibank Texas, N.A.; and Citibank (West), FSB will merge with and into Citibank, N.A. With this merger, your accounts will be with Citibank, N.A.

As of November 30, 2006, Citibank, N.A. will no longer offer Whole Wallets Drafts for purchase. For more information, please use the contact information listed on this statement.

Domestic Citibank® Global Transfers are now FREE. Transfer at selected ATMs or Citibank Online to another Citibank account anywhere in the U.S.

Print

Page 1

NOW ACCOUNT
Printed by: MELISSA SCHMULD

AMERICAN CHARTERED BANK

 6/26/2006 11:40:28 AM
Reporting Institution: 20

Demand Deposit:

SAFANPREET KAUR MULTANI

	Rel	Birthdate	Phone	Tax Identification
[01] SAFANPREET KAUR MULTANI	P		[H] (847) 490-0449 [E] (847) 593-8333 [H] (847) 437-2191 [B] (847) 593-8333	SSN
[02] SURINDER P MULTANI				
24 BRIGHT RIDGE DR				
SCHAUMBURG IL 60194-3696				

Tax Name: [1] SAFANPREET KAUR MULTANI

Account Classification

Portfolio:	Responsibility Code:		
Product:	NOW ACCOUNT	Account Type Code:	SCHMULD/AMBROSON/OLSON
Accounting Branch:			[100] INDIVIDUALS

Memo Balances

Current Ledger Balance:	\$98,723.00	Current Reg CC Cash Available:	\$98,723.00
Plus Presentments:	\$2,438.03	Memo Available Balance:	\$98,723.00
Memo Ledger Balance:	<u>\$101,161.03</u>		